

**REMARKS****Summary of Office Action**

Claims 1-35 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Claims 11, 12, 14, and 16-25 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 4,871,439 to Enzer et al. ("Enzer").

Claims 1 and 26 would be allowable if rewritten or amended to overcome the rejections under 35 U.S.C. § 112, second paragraph.

Claims 2-10, 13, 15, and 27-35 would be allowable if rewritten to overcome the rejections under 35 U.S.C. § 112, second paragraph, and to include all the limitations of the base claim and any intervening claims.

**Summary of the Response to the Office Action**

Applicants have amended claims 1, 18, and 35. No new matter has been added. Accordingly, claims 1-35 are currently pending.

Applicants amended claim 1 to correct a typographical error. Claim 18 was amended to clarify the programmable device. These revisions do not, and are not intended to, narrow the scope of these claims.

**Applicants' Obligation Under 37 C.F.R. § 1.56**

The Office Action at page 3 advises Applicants of the obligation under 37 C.F.R. § 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made. Applicants believe that the inventions of claims 1-35 were commonly owned when invented.

**The Rejection Under 35 U.S.C. § 112, Second Paragraph**

Claims 1-35 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants respectfully traverse the rejection for at least the following reasons.

The Office Action alleges at page 2 that claims 1, 11, 18, and 26 are indefinite because it is not clear how and when the calibration and quality control steps have to be repeated. Applicants respectfully submit that claims 1-35 fully comply with the requirements of Section 112, paragraph 2. The Examiner's comments are directed to detail that does not affect the clarity of the claims. See MPEP 2173.04 ("If the scope of the subject matter embraced by the claims is clear, and if applicants have not otherwise indicated that they intend the invention to be of a scope different from that defined in the claims, then the claims comply with 35 U.S.C. § 112, second paragraph."); see also Specification ¶ [0044] ("There is no demand as to any time interval between the calibration and the quality control, nor to the time interval between two cycles."); Specification ¶ [0045] ("Between one cycle of calibration and quality control and a previous cycle of calibration and quality control supplementary calibrations and/or quality controls may be performed on the same or different reference materials.")

In addition, the Office Action alleges at page 2 that claim 35 is indefinite because it is duplicative of claim 9. Applicants have amended claim 35 in accordance with the comments of the Office Action.

Accordingly, Applicants respectfully request that the rejection of claims 1-35 under 35 U.S.C. § 112, second paragraph, be withdrawn.

**The Rejection Under 35 U.S.C. § 102**

Claims 11, 12, 14, and 16-25 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 4,871,439 to Enzer. Applicants respectfully traverse the rejection for at least the following reasons.

Applicants respectfully submit that Enzer does not anticipate claims 11, 12, 14, and 16-25 because Enzer does not disclose every feature recited in these claims. First, independent claim 11 recites, among other things, a first calibration step using a reference material, a quality control step using another reference material, and a second calibration step using both reference materials. Enzer discloses a 2-point calibration step, which requires two reference materials. Enzer does not disclose at least a quality control step. Enzer also does not disclose the use of a reference material in a quality control step and subsequent use of the reference material in a calibration step.

Second, the Office Action seems to ignore the language of claim 18, “wherein the programmable device . . . ,” which is particularly directed to features of the claimed programmable device. This language includes features that distinguish the claimed programmable device from Enzer’s programmable device and, in turn, distinguish the claimed apparatus from Enzer’s sensor apparatus.

M.P.E.P. § 2131 states, “[t]o anticipate a claim, the reference must teach every element of the claim.” Applicants respectfully submit that Enzer fails to anticipate independent claim 11 because Enzer fails to teach at least a quality control step and the use of a reference material in a quality control step and subsequent use of the reference material in a calibration step. Enzer also fails to anticipate independent claim 18 because Enzer fails to teach at least features of the programmable device of claim 18. Applicants also respectfully submit that Enzer fails to

anticipate claims 12, 14, 16, 17, and 19-25 because they depend from either claim 11 or claim 18. Accordingly, Applicants respectfully request that the rejection of claims 11, 12, 14, and 16-25 under 35 U.S.C. § 102(b) be withdrawn.

### **Conclusion**

In view of the foregoing, Applicants respectfully request reconsideration and the timely allowance of pending claims 1-35.

Except for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-0310. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

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By: \_\_\_\_\_

  
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